

REMARKS

Claims 1-19 are pending and under consideration in the above-identified application. Claims 8-15 stand withdrawn from consideration pursuant to a restriction requirement.

In the Office Action dated April 27, 2009, the Examiner rejected claims 1-7 and 16-19.

With this amendment, claims 1, 16 and 17 were amended and claims 20 and 21 were added. No new matter has been introduced as a result of the amendments.

I. 35 U.S.C. § 112 Indefiniteness Rejection of Claims

Claims 1-7 and 16-19 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner stated that the term “containing a gas adsorbing carbon material within the battery for adsorbing carbon gas” is not clear. In response, Applicant amended the claims to clarify that the gas adsorbing carbon layer contains a carbonaceous material and that the gas adsorbing carbon layer is effective to adsorb a gas.

II. 35 U.S.C. § 103 Obviousness Rejection of Claims

Claims 1-5, 7 and 16-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mitsufumi et al. (JP 09-035,718), in view of Takeuchi et al. (U.S. Patent No. 5,807,645) or over Takeuchi et al. in view of Mitsufumi et al. (JP 09-035,718). Applicant respectfully traverses this rejection.

The claims require a non-aqueous electrolyte battery that includes an electrolyte. The electrolyte includes a polymer material and an electrolyte salt. Additionally, the claims require a gas adsorbing carbon layer containing a carbonaceous material that is on a portion of the anode. The carbonaceous material has a specific surface area that is not less than 30 m²/g. As discussed

in the specification, the gas adsorbing carbon layer is effective to adsorb a gas evolved within the battery.

Mitsufumi et al. teaches a nickel hydrogen secondary battery that includes a polymer material as a binder and a liquid electrolyte. Mitsufumi et al., Abstract & paragraph [0017]. Mitsufumi et al. specifically teaches an *aqueous* electrolyte and a *binder* that is a polymer material, whereas the claims require a solid electrolyte that includes a polymer material.

Additionally, Mitsufumi et al. teaches that the carbonaceous material is added to the anode mixture or the cathode mixture whereas the claims require a gas adsorbing carbon layer containing a carbonaceous material that is on a portion of the anode. Mitsufumi et al, paragraph [0003]. Furthermore, Mitsufumi et al. teaches a nickel hydrogen secondary battery, where the anode has a higher capacity than the cathode. As a result of the difference in capacities, the cathode has absorbs gas that evolves within the battery and the carbonaceous material does not need to adsorb gas as required by the claims.

The Examiner suggested that the layers formed by the anode and the cathode are sufficient to form the gas adsorbing carbon layer as required by the claims. Office Action, page 6. However, the gas adsorbing carbon layer required by the claims is on a portion of the anode and is therefore a separate and distinct layer. As such, merely adding a carbonaceous material to the anode mixture or the cathode mixture as taught by Mitsufumi et al. does not create the same gas adsorbing carbon layer as required by the claims.

Takeuchi et al. teaches a battery that has a cathode with “a minor amount of a low surface area carbonaceous diluent... added to a cathode active material.” Takeuchi et al., Col. 3, lines 29-31. Similar to Mitsufumi et al., Takeuchi et al. also teaches that the carbonaceous material is

added to the cathode active material, as opposed to forming a separate gas adsorbing carbon layer on a portion of the anode as required by the claims.

As such, taken either singularly or in combination with each other, the above cited references fail to teach or even fairly suggest all the required elements of the claims. Thus, independent claim 1 is patentable over the cited references as are dependent claims 2-5, 7 and 16-19 for at least the same reasons. Accordingly, Applicant respectfully requests that the above rejection be withdrawn. Additionally, Applicant requests that the rejection of dependant claim 6, which is based in part on Takeuchi et al. and Mitsufumi et al. be withdrawn for at least the same reasons as discussed above.

III. Conclusion

In view of the above amendments and remarks, Applicant submits that all claims are clearly allowable over the cited prior art, and respectfully requests early and favorable notification to that effect.

Respectfully submitted,

Dated: July 27, 2009

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